

SECTION 45 - COMPLIANCE

A. Compliance Process

Identification of Parties

Upon learning of or discovering an unauthorized encroachment or activity, Area personnel shall verify the violation by contacting the property owner or involved parties and arranging a site visit, if appropriate. If determination of the property ownership is not immediately possible, discussion with a neighbor or the contractor may help. Ownership may also be obtained from the county assessor's office. After ownership has been determined, existing encroachment records should be reviewed. Although direct communications or phone conversations may occur, the Department shall follow up with a written Notice of Violation to the property owner specifically stating the violations, the steps necessary to resolve the violation, and appropriate deadlines ([Attachment 17](#)) ([IDAPA 20.03.04.080.02](#)). A copy of the letter shall be sent to the Operations Chief, with a copy to the Bureau for their notification and records. The Area shall likewise retain a copy for their files.

Document Staff Time and Expenses

Area staff should document staff time and expenses associated with the violation. This information will be necessary to justify potential civil penalties.

Assess Nature of Violation

In an attempt to resolve the violation, the Department may consider whether the violation involves activity which could be allowed through a subsequent encroachment permitting process. In this situation, the Department will provide the violator with an encroachment application and a deadline for completion. While the application is being processed, no further construction activities shall be completed. Although the application may ultimately be approved, the Department will reserve the right to impose civil penalties. Denial of the application may require restoration or mitigation of the lake bed or shoreline or removal of unauthorized encroachments ([IDAPA 20.03.04.080.06](#)).

Cease and Desist Orders

Cease and Desist Orders ([Attachment 18](#)) may be issued in the following situations ([IDAPA 20.03.04.080.01](#)):

- Refusal of the property owner to comply with Department requests; or
- On-going or significant impacts to the public trust values

Non-Response Scenario

If the property owner does not comply with the Notice of Violation, a second letter shall be submitted to the violator by certified and regular mail. The second letter shall state any civil penalties that may be levied and any actions required to resolve the violation. The letter should state that the Department may seek injunctive relief and will engage the Attorney General's office for potential legal action, if the matter remains unresolved. The Area Supervisor should sign this letter. A copy of the letter shall be sent to the Bureau and Operations Chief for their notification. The Area shall likewise retain a copy for their files ([IDAPA 20.03.04.080.03](#)).

Legal Department Involvement

If no response is received from the above actions, the Area shall send a memo to the Operations Chief, with a copy to the Bureau explaining the situation and requesting legal action through the Attorney General's Office ([IDAPA 20.03.04.080.03](#)).

Civil Penalties

Civil penalties are not fines and must reflect an agency's costs to investigate and remedy a violation. Area and Bureau staff shall keep track of their time and expenses spent on each violation. Time will be converted to cost using a fully loaded wage. Civil penalties should be assessed for violations that cannot be remedied by the applicant submitting an after the fact application. For example, unauthorized fills, oversized docks, and illegal encroachments that the department determines must be removed should result in a civil penalty.

B. Permit Revocation

Authority

The Department can revoke an encroachment permit by administrative action when an encroachment is not in compliance with the Lake Protection Act or the issued permit ([IDAPA 20.03.04.080.07](#)). The revocation is accomplished by the Area, in coordination with the Operations Chief and the Deputy Attorney General assigned to the Department.

Notice of Revocation

A notice of Noncompliance/Permit Revocation shall be provided to the permittee ([Attachment 19](#)), which shall state the reason for the proposed revocation, including any legal authority.

Hearing Process

Revocation proceedings shall be conducted as a contested case hearing ([IDAPA 20.03.04.080.07](#)) subject to [Idaho Code, Title 67, Chapter 52](#) and [IDAPA 20.01.01](#).

If the permittee disagrees with the Department's reason for revocation, they can request a contested case hearing within thirty (30) days from receipt of the notice of noncompliance/ revocation letter. If a request for a contested case hearing is made, the Department shall proceed to schedule and conduct a contested case hearing, in accordance with Idaho Code and the Rules ([IDAPA 20.03.04.080.07](#)).

At the conclusion of the hearing, the hearing officer shall prepare a Finding of Facts and Conclusion of Law and forward them to the Director for adoption or rejection ([IDAPA 20.03.04.080.07](#)).

No Hearing Requested

If no request for a contested case hearing is made, the Department shall move forward to administratively revoke the permit ([IDAPA 20.03.04.080.07](#)).

Encroachment Removal

After a permit has been revoked, the former permittee shall be given a reasonable timeframe to remove the encroachment, typically sixty (60) days. If the encroachment is not removed, the former permittee shall be considered in trespass and the Area should contact the Deputy Attorney General to initiate the appropriate legal action.